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9 January 2013

Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Attention: Ms Evelyn Lee)
Fax No. : 28775029

Dear Ms Lee,

**Proposed Resolutions to
Exclude the Application of the Profit Control Scheme (“PCS”) to
the New Bus Franchises**

Thank you for your letter of 8 January 2013.

At present, the PCS is not applicable to any existing bus franchises. Such disapplication has been effected through the passage of resolutions by LegCo to disapply only sections 27 to 29 and 31 of the Public Bus Services Ordinance (“the Ordinance”) (Cap. 230) since 1996. We are proposing nothing but the same in the current exercise for the new franchises of New World First Bus Services Limited, Long Win Bus Company Limited and Citybus Limited in respect of its franchise for the Airport and North Lantau bus network which will take effect later this year.

Sections 27 to 29 and 31 of the Ordinance set out the core elements of the PCS, namely the development fund, permitted return, deductions from permitted returns and review of the PCS. Existing and

new franchises do not carry any arrangements concerning the PCS, development fund and permitted return. By disapplying these sections, there would no longer be any PCS mechanism in place in substance. The fact that some sections under Part V of the Ordinance, namely sections 26, 26A, 30 and 32, continue to apply will not affect this. So considered in that way, the whole PCS would disapply.


Indeed, sections 26, 26A, 30 and 32 are required for purpose of the execution of other parts of the Ordinance and/or the franchises in addition to the PCS. Specifically, such needs are as follows -

- (a) section 26 contains definitions (such as accounting year, average net fixed assets, fixed assets, operating costs, operating receipts, and operating profit) required for monitoring of the financial situation of a bus franchisee irrespective of whether there is a PCS. This is an integral part of the financial monitoring of the public bus service operated in connection with the Ordinance and the franchise;
- (b) section 26A specifies that financial penalties levied against a bus company shall not be taken into account in ascertaining the operating cost or service related expenditure of the company for any purpose related to the Ordinance or the franchise;
- (c) section 30 enables the Government to specify in the franchise depreciation rates and residual values in respect of fixed assets used or kept by a bus company for the purpose of or in connection with its franchise; and
- (d) section 32 requires a bus company to produce accounts and other information in relation to the public bus service operation as the Financial Secretary may require.

Given the subject matters that each of these sections concerns, their application is required for the proper monitoring of the financial aspects of the franchise by the Government, with or without the PCS. Their continued application would not have automatically put in place the PCS mechanism, and neither would it contradict with the disapplication of the PCS.

In short, our view is that the PCS would cease to apply to the three new franchises after the disapplication of sections 27 to 29 and 31, notwithstanding that sections 26, 26A, 30 and 32 would continue to apply. If you require further information, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Choy', with a large loop at the top and a wavy tail.

(Constance Choy)

for Secretary for Transport and Housing

c.c. Commissioner for Transport (Attn: Ms Macella Lee)
Department of Justice (Attn: Mr Manuel Ng and
Ms Karen Lee)

Internal: PAS(FMS)